

## **REMARKS**

With claims 1-35 originally pending, with this amendment claims 5, 6, 17 and 22 have been cancelled, while claims 1-4, 7, 9, 12, 16, 18, 19, 23-27, and 31-33 have been amended.

### **Double Patenting**

The Office Action advises Applicant that should claim 5 be allowable, claim 6 will be objected to as being a substantial duplicate. Claims 5 and 6 have both been cancelled rendering this potential rejection moot.

### **Claim Objections**

Claims 1-7, 9, 12-18, 23 and 24-35 stand objected to because of informalities specifically pointed out by the Office Action with suggested changes to correct the informalities. The claims have been amended as suggested by the Office Action to correct the informalities, except claim 34. Claim 34 has not been amended, since no prior antecedent basis is provided in claim 34 for the term “decrease.” Based on these amendments and remarks, Applicant requests that this objection to claims be withdrawn.

### **Section 103 Rejections**

Claims 1, 5-7, 19, 22 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Schirle (6,055,120). Based on the amendments to claims 1 and 19, this rejection is believed to be overcome.

Claim 1 has been amended to include elements from claim 6 reciting that “the spin-up parameters comprise at least one of: a. spin-up current; b. spin-up voltage; and c. commutation time.” Claim 6 has, accordingly, been cancelled. The Office Action states that Schirle discloses the method of claim 1, and further states that Schirle discloses that the spin-up parameters include spin-up time referring to (abstract, col. 2, lines 14-48, col. 4, lines 47-59; failure timing or time-out period). However, the “spin-up time” is now not claimed as one of “the spin-up parameters” of claim 1. Schirle does not disclose using temperature to determine spin-up parameters, where the spin-up parameters include items other than “spin-up time,” such as “a. spin-up current; b. spin-up voltage; and c. commutation time” now claimed in claim 1. Accordingly claim 1 is now believed patentable as non-obvious over Schirle.

Claim 7 is believed allowable as non-obvious over Schirle based at least on its dependence on claim 1. Claims 5-6 have been cancelled rendering this rejection moot with respect to those claims.

Claim 19 has been amended, similar to claim 1, to include elements from claim 22 indicating that “the spin-up parameters comprise at least one of: a. spin-up current; b. spin-up voltage; and c. commutation time.” Claim 22 has accordingly been cancelled. Based on the remarks with respect to claim 1, claim 19 is now likewise believed patentable as non-obvious over Schirle.

Claim 23 is believed allowable as non-obvious over Schirle based at least on its dependence on claim 19. Claim 22 has been cancelled rendering this rejection moot with respect to that claim.

Claims 2-4, 12-18 and 20 further stand rejected under 35 U.S.C. § 103 as being unpatentable over Schirle (6,055,120) in view of Wallis (5,268,804). Based on the amendments to claims 1, 12 and 19, this rejection is believed to be overcome.

Claims 2-4 and 20 depend on respective claims 1 and 19, which as indicated above, have been amended to recite that “the spin-up parameters comprise at least one of: a. spin-up current; b. spin-up voltage; and c. commutation time.” Neither Schirle nor Wallis disclose using temperature to determine spin-up parameters, where the spin-up parameters include items other than “spin-up time,” such as “a. spin-up current; b. spin-up voltage; and c. commutation time” now claimed. Accordingly claims 2-4 and 20 are now believed patentable as non-obvious over Schirle in view of Wallis based at least on their dependence on respective ones of claims 1 and 19.

Claims 12, like claims 1 and 19, has been amended to include elements from claim 17 indicating that “the spin-up parameters comprise at least one of: a. spin-up current; b. spin-up voltage; and c. commutation time.” Claim 17 has accordingly been cancelled. Based on the remarks with respect to claims 1 and 19, claims 12-16 and 18 are now likewise believed patentable as non-obvious over Schirle in view of Wallis.

### **Allowable Subject Matter**

Claims 8, 10, 11 and 35 are indicated as being allowed.

Claims 9 and 24-34 are indicated as being allowable if rewritten or amended to overcome the minor informality objections. Based on the amendments made to overcome the minor informality objections discussed previously in this Reply, claims 9 and 24-34 are now believed in condition for allowance.

Claim 21 is objected to as being dependent upon a rejected based claim, but is indicated as allowable if rewritten in independent form. Claim 21 has been rewritten in independent form, and is now believed unobjectionable.

## Conclusion

In light of the above amendments and remarks, claims 1-4, 7-16, 18-21 and 23-35 are all believed in condition for allowance. Accordingly, reconsideration and allowance of these claims is respectfully requested.

No fee is believed due with this response. Should a fee be due, the Commissioner is authorized to charge any underpayment to Deposit Account No. 06-1325.

Respectfully submitted,

Date: 11/11/04

By: Thomas A. Ward  
Thomas A. Ward  
Reg. No. 35,732

FLIESLER MEYER LLP  
Four Embarcadero Center, Fourth Floor  
San Francisco, California 94111-4156  
Telephone: (415) 362-3800